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# Teaching Tax Stories

Ajay K. Mehrotra

Law professors who teach tax have long recognized the challenges of their subject matter. As Michael A. Oberst has observed, "Most students approach their first tax course with trepidation. They have the preconceived idea that tax law lacks coherent concepts and policies. They imagine it as a black hole of mind-boggling technical complexity, requiring superlative skills of memorization and mathematics."<sup>1</sup> Even some of the best-known teachers of tax have lamented that the growing complexity of tax law has made the subject "virtually unteachable,"<sup>2</sup> and that beginning tax professors would be well advised to "think of teaching some other subject."<sup>3</sup>

In an attempt to dispel students' preconceived notions and to make tax more teachable, legal academics have considered several ways to approach the teaching of tax, in both introductory and advanced courses. Some have argued that tax teachers should employ an "active approach" that requires students to struggle directly with the intricacies of the Internal Revenue Code and regulations.<sup>4</sup> Others have suggested that J.D. tax courses should be guided by an "interdisciplinary, process-oriented approach" that examines tax issues from multiple perspectives, not just that of the legal practitioner.<sup>5</sup> And still others have contended that law professors ought to apply "critical methods to teaching tax," exploring how issues of race, class, gender, and other nontraditional categories of analysis intersect with tax law.<sup>6</sup>

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1. Teaching Tax Law: Developing Analytical Skills, 46 J. Legal Educ. 79, 80 (1996).
2. Interview with James S. Eustice, 11 A.B.A. Sec. Tax'n Newsl. 38, 42 (1992), *quoted in* Paul L. Caron, Tax Myopia, or Mamas Don't Let Your Babies Grow Up to Be Tax Lawyers, 13 Va. Tax Rev. 517, 522 (1994). As Caron suggests, tax teachers can also benefit when lowered student expectations for a tax course are surprisingly exceeded. *Id.*
3. Interview with Erwin N. Griswold, 11 A.B.A. Sec. Tax'n Newsl. 56, 68 (1992).
4. Oberst, *supra* note 1.
5. Michael A. Livingston, Reinventing Tax Scholarship: Lawyers, Economists, and the Role of the Legal Academy, 83 Cornell L. Rev. 365, 431 (1998). With the growing interest in tax LL.M. programs, Livingston contends, "[a] more technical approach may be justified in LL.M. courses, which are designed to have a direct practical application." *Id.* at 431 n.207. For an example of an innovative use of the policy or process approach to teaching tax, see George K. Yin, Simulating the Tax Legislative Process in the Classroom, 47 J. Legal Educ. 104 (1997).
6. Nancy Staudt, Critical Tax Theory: Still Not Taken Seriously, 76 N.C. L. Rev. 1837, 1886 (1998). For a useful introduction to critical tax theory, see the other articles contained in Symposium, Critical Tax Theory: Criticism and Response, 76 N.C. L. Rev. 1519 (1998).

Despite these methodological differences, most innovative approaches to teaching tax generally seek the dual goals of engaging students and highlighting the importance of tax for a well-rounded legal education. With the publication of *Tax Stories*, law teachers have returned to a time-honored method of emphasizing their subject matter and engaging their audiences: storytelling. Although the use of narratives in legal scholarship and teaching is not new, its conspicuous absence in the field of tax law has been duly noted.<sup>7</sup> *Tax Stories*, edited by Paul L. Caron—who is also responsible for initiating the *Law Stories* series—is the first comprehensive attempt to address this void in the tax literature.<sup>8</sup>

At its heart *Tax Stories* appears to have two principal objectives. The first and more explicit aim is to use the vividness of storytelling to attract student interest in some of the landmark Supreme Court cases at the center of the introductory tax course—cases, as Caron explains, that have “set the law on a path that continues to shape much of the current developments in the field” (page 3). The second purpose seems to be to demonstrate the importance of historical analysis to the study of tax law more broadly—to show how the past can provide what Caron refers to as salient “doctrinal” and “institutional lessons” for the present. The essays in this volume, written by some of the country’s leading tax scholars, are more successful on the first score than on the second. Indeed, the book as a whole admirably achieves the primary purpose of animating the events and individuals surrounding the leading Supreme Court decisions, but it does not quite capture the interpretive power of historical analysis.

***Tax Stories: An In-Depth Look at Ten Leading Federal Income Tax Cases*, edited by Paul L. Caron. New York: Foundation Press, 2003.**

These two aims, of course, are not mutually exclusive. Historical analysis can be a form of storytelling that attempts to transport its audience into the past. Such narrative history seeks to convey a sense of empathy with past actors, to bring to life the context and lived experiences of an earlier time. But

7. Carolyn C. Jones, Mapping Tax Narratives, 73 Tul. L. Rev. 653 (1998). As an introduction to the vast literature on the importance of narratives and storytelling for legal scholarship and teaching, see generally Symposium, Legal Storytelling, 87 Mich. L. Rev. 2073 (1989).
8. *Tax Stories: An In-Depth Look at Ten Leading Federal Income Tax Cases*, ed. Paul L. Caron (New York, 2003). Page references will appear in parentheses in the text.

While the application of narratives to tax law has been limited, the use of historical analysis has not. At least since the work of Randolph Paul, American legal scholars have approached the analysis of tax law from a historical perspective. See generally Randolph E. Paul, *Taxation in the United States* (Boston, 1954). More recently numerous tax scholars have been leading the way toward a new legal history of American taxation. See, e.g., Marjorie E. Kornhauser, The Origins of Capital Gains Taxation: What’s Law Got to Do with It? 39 Sw. L.J. 869 (1985); Steven A. Bank, Mergers, Taxes, and Historical Realism, 75 Tul. L. Rev. 1 (2000); Kirk J. Stark, The Unfulfilled Tax Legacy of Justice Robert H. Jackson, 54 Tax L. Rev. 171 (2001); Tax Justice: The Ongoing Debate, eds. Joseph J. Thorndike & Dennis Ventry (Washington, 2002); Charlotte Crane, *Pennington v. Cox*: A Glimpse at the Federal Government at the End of the Federalist Era, 23 Va. Tax Rev. 417 (2003); Assaf Likhovski, The Duke and the Lady: *Helvering v. Gregory* and the History of Tax Avoidance Adjudication, 25 Cardozo L. Rev. 953 (2004); Reuven S. Avi-Yonah, Corporations, Society, and the State: A Defense of the Corporate Tax, 90 Va. L. Rev. 1193 (2004).

history is also much more than simply recounting the past "as it actually was."<sup>9</sup> For most contemporary historians, history as a form of interpretation also consists of seeing the richness of the past through the eyes of the present and in light of current concerns.<sup>10</sup> Eschewing timeless universalisms, legal historians writing in this vein have continually emphasized the interconnectedness of social, political, economic, and legal phenomena, thereby questioning the absolute autonomy of the law.<sup>11</sup>

For others, history holds a more critical edge. In reconstructing the fluidity of the past, critical legal theorists view the writing of history as an inherently destabilizing process—a process that illustrates the contingency of past events and hence "denaturalizes" the current state of affairs.<sup>12</sup> One of the tasks of historical analysis, for such theorists, is to tell a story about the unfolding of events within a broad historical context that shows not only how the past continues to inform the present, but also how the present is perhaps only one of the plausible results of past choices.

Given the potential analytical perspective of narrative history, books attempting to place canonical Supreme Court cases into their proper historical context should be a welcome addition to any law professor's teaching resources. As other reviewers have noted, the teaching of tax, like many other law school courses, is rather ahistorical.<sup>13</sup> Throughout the law school curriculum, students are required to read appellate cases frequently ripped from their social, political, and economic contexts. In an effort to counter this doctrinal, ahistorical legalism, *Tax Stories* seeks to set the leading tax cases into their appropriate historical context and sequence of events. The book's in-depth examination of the historical antecedents and the legal and institutional circumstances that gave rise to leading tax doctrines provides not only useful anecdotes for tax teachers,<sup>14</sup> but also important insights into the working principles of current tax practice.

### A Bird's Eye View of *Tax Stories*

*Tax Stories*, as Caron mentions, is organized conceptually into three parts. The first four chapters deal primarily with what most tax academics consider

9. Following the lead of the nineteenth-century German historian Leopold von Ranke, generations of American historians believed that showing the past "wie es eigentlich gewesen" (as it actually was) was the essence of the historian's craft. Peter Novick, *That Noble Dream: The "Objectivity Question" and the American Historical Profession* 26–30 (Cambridge, 1988).
10. The classic explication of this view can be found in E. H. Carr, *What Is History?* (New York, 1961).
11. For a recent programmatic essay on the historical interaction of legal and economic history, see Ron Harris, *The Encounters of Economic History and Legal History*, 21 *Law & Hist. Rev.* 297 (2003).
12. Robert W. Gordon, *Critical Legal Histories*, 36 *Stan. L. Rev.* 57 (1984). For more on the role of critical theory in American legal historiography, see William W. Fisher III, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, 49 *Stan. L. Rev.* 169 (1997).
13. Reuven S. Avi-Yonah, *Tax Stories and Tax Histories: Is There a Role for History in Shaping Tax Law?* 101 *Mich. L. Rev.* 2227 (2003); Jay A. Soled, *Tax Stories Adds Anecdotal Interest to Tax Cases*, *Tax Notes*, Aug. 4, 2003, at 727.
14. Soled, *supra* note 13.

“the central inquiry” in the introductory tax course: what is income?<sup>15</sup> The cases in this first section deal with such issues as whether windfall gains constitute income;<sup>16</sup> when income is realized by a taxpayer;<sup>17</sup> whether cancellation of indebtedness constitutes income;<sup>18</sup> and the proper tax treatment of property transfers incident to divorce.<sup>19</sup> Mirroring the order of most tax casebooks,<sup>20</sup> the second part of *Tax Stories* (chapters 5 through 7) turns “to the deduction side of the equation” (6), focusing on those cases that have helped shape the current parameters of the deductibility of expenses related to earning income. These chapters explore the origins of the requirement that such business expenses be “ordinary and necessary”;<sup>21</sup> the requirement of a distinction between current expenses and capital expenditures;<sup>22</sup> and—in a chapter that appears a bit out of place in this section of the book—the proper treatment of transfers of property subject to debt.<sup>23</sup> The third section of the book (chapters 8 through 10) explores “three pervasive income tax issues” (9) that resonate with current concerns: the distinction between income tax and financial accounting principles;<sup>24</sup> the issue of income shifting as a possible assault on an ostensibly progressive income tax;<sup>25</sup> and the process of drawing the “line between permissible tax planning and impermissible tax shelters” (11).<sup>26</sup>

While each of the chapters explores the details of the cases and their impact on the subsequent development of doctrine, the book as a whole culls two general themes from the stories. One is that many Supreme Court decisions have unintended consequences. The other theme, connected to the first, is the general inability of the justices to address adequately the complexity of tax cases. We are told, for example, that the Court’s curt opinion in *Kirby Lumber*, in which it held that the cancellation of debt constituted income mainly under the theory that such cancellation led to an increase in the taxpayer’s net worth, was not only empirically and economically inaccurate: the Court’s reasoning was “confusing and led to decades of confusion” (104).

15. Martin D. Ginsburg, *Teaching Tax Law After Tax Reform*, 65 Wash. L. Rev. 595 (1990).

16. Chapter 1, by Joseph M. Dodge, discussing *Commissioner v. Glenshaw Glass*, 348 U.S. 426 (1955).

17. Chapter 2, by Marjorie E. Kornhauser, discussing *Eisner v. Macomber*, 252 U.S. 189 (1920).

18. Chapter 3, by Deborah H. Schenk, discussing *United States v. Kirby Lumber*, 284 U.S. 1 (1931).

19. Chapter 4, by Karen B. Brown, discussing *United States v. Davis*, 370 U.S. 65 (1962).

20. Because the organization of the book follows the order in which these cases are generally taught in an introductory tax course, *Tax Stories*, as one reviewer has noted, presents these cases out of their chronological sequence, leading to occasional historical anachronisms and disjunctions. Avi-Yonah, *supra* note 13, at 2233.

21. Chapter 5, by Joel S. Newman, discussing *Welch v. Helvering*, 290 U.S. 111 (1933).

22. Chapter 6, by Joseph Bankman, discussing *INDOPCO v. Commissioner*, 503 U.S. 79 (1992).

23. Chapter 7, by George K. Yin, discussing *Crane v. Commissioner*, 331 U.S. 1 (1947). Though it is unstated, *Crane* was probably included in this section of the book because it ultimately deals with the issue of the timing of deductions.

24. Chapter 8, by Russell K. Osgood, discussing *Schlude v. Commissioner*, 372 U.S. 128 (1963).

25. Chapter 9, by Patricia A. Cain, discussing *Lucas v. Earl*, 281 U.S. 111 (1930).

26. Chapter 10, by Daniel N. Shavero, discussing *Knetsch v. United States*, 364 U.S. 361 (1960).

Similarly, the Court's opinion in *United States v. Davis*, where the transfer of appreciated property incident to a divorce was held to be a taxable event, is criticized for being out of touch with the realities of modern marital relations, and for exacerbating the complexities of tax planning for a divorce.

Individual justices are often singled out for what Caron identifies as "withering criticism" (13). Joel Newman, in his examination of Justice Cardozo's attempt to define the boundaries of "ordinary and necessary" business expenses, describes Cardozo's "whining" opinion as wrong for the most part, and providing "very little guidance" even when it is correct (165). The impact of this decision, Newman concludes, "needlessly confused subsequent courts (as well as tax practitioners and students)," and the spirit of the case "lives on in the unfortunate doctrine stifling business innovation" (181). By contrast, Joseph Bankman characterizes Justice Blackmun, "the most knowledgeable tax jurist ever to sit on the Court" (184), not as an inept tax analyst, but rather as an overconfident jurist whose tax hubris emboldened him to elaborate on his decision to the point of paradoxically creating more confusion.<sup>27</sup> The decision "would have been better," Bankman surmises, "had Blackmun said less" (203). While it is not unusual for legal academics to criticize the Court, the essays in *Tax Stories* frequently view the inability of the justices to foresee the implications of their decisions and reasoning as one of the major historical tropes in the doctrinal development of American tax law.

### The Historical Insights of *Tax Stories*

In pursuing these general themes, the chapters frequently fulfill the objective of bringing the rich texture of the past to life. Through the specifics of their stories, the authors illuminate the authentic desires and concerns of the taxpayers, lawyers, and jurists involved in these disputes. In Patricia Cain's essay on *Lucas v. Earl*, we learn about the fascinating biography of Guy C. Earl and the life he made in California with his wife, Ella J. Ford, during one of the most dynamic periods of the state's business history (Chapter 9). Likewise, Marjorie Kornhauser's essay on *Eisner v. Macomber* shows how Myrtle H. Macomber's "powerhouse" legal team had not only the best interests of their client, but also the pecuniary interests of the nascent tax bar in mind in arguing her case (Chapter 2). George Yin's examination of *Commissioner v. Crane* chronicles how the economic dislocation of the Great Depression nearly devoured the financial resources of Beulah Crane and her husband (Chapter 7). And Joel Newman, in the process of pillorying Cardozo's opinion in *Welch*, sheds some light on how the Cardozo family's personal history may have influenced the justice's decision (Chapter 5).<sup>28</sup> These and other chapters in

27. Bankman notes that Blackmun "had spent over a decade as a tax lawyer prior to his appointment to the bench; he had also taught [tax] at the University of Minnesota Law School and what is now William Mitchell College of Law" (citing Robert Green, Justice Blackmun's Federal Tax Jurisprudence, 26 Hastings Const. L.Q. 109 (1998)).

28. In a footnote (163 n.36) Newman mentions that a taxpayer's desire to clear his family name by repaying past debts may have reminded Cardozo of his own personal decision to become a lawyer, which was rooted in Cardozo's desire to rectify the disgrace brought on by his father's resignation from the New York Supreme Court amid allegations of corruption (citing Andrew L. Kaufman, Cardozo (Cambridge, Mass., 1998)).

*Tax Stories* lucidly put a human face on the otherwise dry and staid perception of tax law.

In addition to animating the past, the chapters provide a wealth of detailed information about the legal context of the disputes. By combing through the lower-court decisions and transcripts, the litigants' briefs, oral arguments, the occasional magazine and newspaper article, and even the archival papers of some of the justices, the authors provide an incredible amount of data about the broader legal circumstances that shaped some of these fundamental tax decisions.<sup>29</sup> From a doctrinal perspective, the authors reveal how even the most obvious principles of the federal income tax—principles that many beginning students and instructors often take for granted—were created during periods of legal uncertainty and plasticity. Consider, for example, the definition of income itself. In his exploration of *Glenshaw Glass*, Joseph Dodge shows how, even forty years after the establishment of the national income tax in 1913, courts were still struggling to define the parameters of "gross income." Building on her previous work in tax history,<sup>30</sup> Marjorie Kornhauser goes one step further in her essay on *Macomber* by demonstrating how the decision can best be understood as part and parcel of the prevailing theoretical debates in political economy at the time of the decision.

Other insights occur when the facts surrounding a case are placed within their proper temporal sequence. Patricia Cain's essay on *Lucas v. Earl*, for instance, shows that the dominant motive of the married taxpayers in drafting an agreement that divided the husband's income and property between the spouses was to simplify their estate planning—a motive that is elided by many tax casebooks' discussions of the decision.<sup>31</sup> Similarly, George Yin demonstrates how the decision in *Crane* to require taxpayers to include nonrecourse debt in the amount realized on a sale or disposition of property did not necessarily create the tax shelter phenomenon, but certainly accelerated it by "magnifying the inadequacies of other tax rules" (254).

This emphasis on chronology is reinforced by the chapters' organizational template. Each chapter begins with some background on the decision, followed by descriptions of lower-court proceedings, and then the details of the Supreme Court opinion. Each concludes with a discussion of the immediate impact of the case and its continuing importance. This template gives the book as a whole some organizational continuity, and provides easy access for the harried law student or instructor who might be searching the chapters instrumentally for some specific detailed information surrounding a case.

29. Much of this information is available at a public Web site that accompanies the book. See <<http://www.law.uc.edu/TaxStories>> (last visited Aug. 8, 2005).

30. Kornhauser, *supra* note 8; Marjorie E. Kornhauser, Section 1031: We Don't Need Another Hero, 60 S. Cal. L. Rev. 397 (1986).

31. The latest edition of at least one casebook has incorporated Cain's insight into its discussion of *Lucas v. Earl*. See Federal Income Taxation, eds. William A. Klein et al., 576 (New York, 2003).

### The Historical Limits of *Tax Stories*

Despite its admirable achievements, *Tax Stories* is not without its flaws. First, although the chapter templates provide continuity and accessibility, the fixed ordering also imposes a linear rigidity upon the stories. The analytical and interpretive significance of a narrative comes from the storyteller's decisions about which facts and events to include and how to frame the story. The storyteller in a sense imbues facts and events with importance. By forcing the stories into an established narrative structure, the volume appears to deny the individual authors the opportunity to take full advantage of the benefits of the narrative form.<sup>32</sup>

Second, while all of the essays give us a great deal of detailed information about the legal context of the decisions, some of them have little or almost nothing to say about the broader social, political, and economic conditions in which these cases were embedded. The chapters examining the doctrinal development of the definition of income, for instance, frame their stories as purely "internal" accounts of how jurists and legal professionals (and occasionally economic theorists) understood the debate surrounding the treatment of windfalls and the cancellation of debt.<sup>33</sup> While the Great Depression is identified as one of the causes for the increasing prevalence of defaulted loans during the 1930s, there is no elaboration on the way the political and economic response to the Depression—the emerging New Deal order—may have also influenced how jurists, lawyers, policymakers, and citizens approached this issue. The chapter on *Glenshaw Glass* goes even further in conveying a highly internalist account. Indeed, this chapter concludes with the claim that *Glenshaw Glass* ushered tax law into the "modern" era, where "tax jurisprudence is autonomous from other disciplines, while being cognizant of them" (51).<sup>34</sup>

Other chapters are less sanguine about the autonomy of tax law, recognizing often implicitly that external factors such as political and economic conditions have both shaped the contours of tax law and been altered by them. The story behind *INDOPCO*, the most recent case in the book, plainly reveals how business interests and the larger tax community were affected by the decision, how they mounted a counterattack limiting the implications of the case, and how Blackmun's ambiguous language brought into stark relief

32. Critical legal scholars, for instance, have used the flexibility of the narrative form for "oppositional storytelling or counter-storytelling," as a way to undermine the presuppositions of mainstream legal theory. Jones, *supra* note 7, at 654–55.

33. According to internal accounts, legal doctrine evolves as jurists make sense of the implications of earlier decisions. Doctrinal development, according to this view, is a mode of intellectual discourse that has its own internal dynamic where law is seen as autonomous from its broader social context. For one of the classic essays contrasting "internal" and "external" versions of legal history, see Robert W. Gordon, Introduction: J. Willard Hurst and the Common Law Tradition in American Legal Historiography, 10 *Law & Soc'y Rev.* 9 (1975).

34. Since the authors are law teachers and not historians, it is not surprising that they have privileged the internal trajectory of law. The development of legal doctrine is, after all, the main disciplinary focus of most law professors. At least two of the authors, Marjorie Kornhauser and Russell Osgood, have done prior work in legal history. See Kornhauser, *supra* note 8; Russell K. Osgood, Governmental Functions and Constitutional Doctrine: The Historical Constitution, 72 *Cornell L. Rev.* 553 (1987).



the political tensions within the tax administrative bureaucracy. Stories like this certainly appear to undermine any notion that modern tax law could tenably be insulated from broader social, political, and economic forces.

The book's dominant emphasis on the independent development of doctrine, however, ultimately clouds the insights that historical analysis can produce. By focusing primarily on how the key cases, and the decisions leading up to them, have shaped current doctrine, many of the essays have a teleological tone. The reader is often led to believe that much of the history is mere preface or background to the inexorable unfolding of "scientific" progress in tax jurisprudence. National lawmakers (and it is lawmakers, not jurists, who are often the heroes of these stories), responding to the missteps of the Court, attempt to create better, more "modern" rules as they relegate the clutter of past (common law) doctrines to the dustbin of history.

This "whiggish" historical interpretation not only elides the contingent development of American tax law,<sup>35</sup> it also unfairly casts doubt on the Supreme Court's institutional competency in tax cases. Given the increasing complexity of tax law, complaints about the Court's institutional abilities may have some validity.<sup>36</sup> Still, many of the essays, particularly those that scathingly criticize individual justices, overlook how the Court itself is a product of a particular historical moment. In neglecting the broader social context and the possibility of external changes over time, these essays often ignore how larger structural transformations in the economy, polity, or culture—not just the faulty logic of a judicial opinion—may come to undermine the rationale of a specific Supreme Court decision.<sup>37</sup>

By focusing mainly on the internal evolution of tax doctrine, many of the chapters also forgo using these stories to illustrate the far-reaching implications of tax law. Tax law teachers are constantly reminding their students how "the tentacles of the tax system" or perhaps less insidiously "the reach of the tax law" touches almost every aspect of people's lives. And the cases included in *Tax Stories* bear this out, discussing the tax treatment of everyday matters from marital relations to debts to dealings in property. But some of the essays, by neglecting the connections between tax law and larger social concerns, miss the opportunity of using historical analysis to underscore the significance of tax law. For example, an examination of the tax treatment of the transfer of property incident to a divorce could have been an excellent opportunity to show how the emerging feminist movement of the late 1950s and 1960s may have affected the development of tax law in this area, and how the subsequent congressional response to the Court's decision in *Davis* could be critiqued as reproducing traditional gender roles. While both of these avenues of analysis

35. As another reviewer has noted, the presentist pull and whiggish tendency of some of the essays have concealed the more cyclical historical development of American tax law. Aviyonah, *supra* note 13, at 2234.

36. See, e.g., Charles L. B. Lowndes, *Federal Taxation and the Supreme Court*, 1960 Sup. Ct. Rev. 222; Bernard Wolfman, *The Supreme Court in the Lion's Den: A Failure of Judicial Process*, 66 Cornell L. Rev. 1075 (1981) (*cited in* Caron's Introduction to *Tax Stories* (12 n.65)).

37. In so doing, many of these essays ignore the common Marxist refrain that history is often made behind men's backs.

are mentioned in the chapter on *Davis*, they are consciously deferred as “another story” (154). Including these “other” stories as part of the conventional historical narrative contained in many of the essays would have made the volume even more pertinent and poignant, especially for students and the average non-tax expert.

### The Ironies of *Tax Stories*

*Tax Stories*’ limited attention to factors outside the formal institutions of the law comes as something of a surprise, for Caron opens his Introduction with a lengthy epigraph from the legal historian A. W. Simpson. Referring to the book’s essays as “archaeological digs,” Caron claims that they respond to Simpson’s call to free canonical cases “from the overburden of legal dogmatics . . . by relating them to the evidence, which has to be sought outside the law library, to make sense of them as events in history and incidents in the evolution of the law.”<sup>38</sup> But even a cursory examination of the historical sources contained in much of the book illustrates that many, though certainly not all, of the authors have not ventured very far from their own computers and their access to online historical databases, let alone the law library.<sup>39</sup>

There are other ironies within *Tax Stories*.<sup>40</sup> As Caron notes, tax is a “curious choice” to begin a series dedicated to the history of landmark Supreme Court cases (2). Of all the courses in the current law school curriculum, tax is often recognized as the one based most on statutory provisions and agency regulations rather than Supreme Court case law. One wonders if *Tax Stories* could not have benefited by exploring some of the concepts rather than merely the cases that are central to the introductory tax course.<sup>41</sup> A few of the essays also contain a stylistic irony in the way they are written. While they are the exception rather than the rule, these essays, in their exclusive preoccupation with case law, do not read much like narratives. One would have expected that in writing a contribution to a book about stories and the significance of storytelling, these authors would have composed essays that were written, well, more like a story than an appellate brief.

\* \* \* \* \*

Though the chapters in *Tax Stories* may not provide a complete historical interpretation of the leading Supreme Court tax cases, they certainly go much further than most casebooks in introducing students to the legal and institutional pressure points that have informed current tax doctrine. On this count alone, *Tax Stories* should prove to be a useful supplement for the basic income

38. Quoting from A. W. Simpson, *Leading Cases in the Common Law* 12 (Oxford, 1995).

39. Since the authors are not professional historians, it may be a bit unfair to ask them to observe the historians’ fetish for archival sources.

40. Some of these ironies or incongruities between the book’s objectives and its execution are no doubt a result of the practical limitations of a collection of multiauthored essays.

41. A forthcoming volume (to which I am a contributor) in the *Law Stories* series dealing with business tax stories will move beyond judicial opinions to examine legislative and administrative changes and transactional innovations. *Business Tax Stories*, eds. Kirk Stark & Steven Bank (New York, 2005).

tax course, where it can be employed constructively both to dispel students' preconceived notions and to demonstrate how current tax laws are the products of past contexts and choices.

Given current calls for "tax reform," such a volume is, indeed, a welcome opportunity to energize aspiring lawyers and policymakers about our current system of taxation. Because so many lawyers and legally trained professionals occupy pivotal policymaking roles—from the local PTA to the corridors of national power—law teachers and tax teachers in particular bear the added burden of educating a key segment of our society.<sup>42</sup> If history and storytelling are one way to inform future lawyers and lawmakers about the importance of tax law, *Tax Stories* will indeed be a success.

*Tax Stories* is also significant and successful in conveying the sentiments of our own current historical moment. The book is, after all, an artifact of our own times. Written in an era when tax scholars have become increasingly disillusioned with our current hybrid income tax system, and when lawmakers have begun the process of incrementally, if not radically, moving our current system towards a consumption tax, *Tax Stories'* focus on the deficiencies of our current system reveals why "tax reform" has become such a prevalent issue. The volume sheds less light on the way the contemporary social and economic scene—the rising inequality of wealth and opportunity in the United States—parallels the origins and early development of our current system.

The book, moreover, illustrates how mainstream tax scholars, writing at the dawn of the twenty-first century, have begun to move beyond the "comfortable but tired" confines of traditional tax scholarship.<sup>43</sup> The chapters in this volume use narrative structures and historical analysis, albeit in a limited fashion, to show how tax law is indeed part of a broader context and sequence of events. Viewed from the perspective of the past, *Tax Stories* demonstrates how far we have in fact come in integrating interdisciplinary approaches to the study and teaching of tax law, and how far we still have to go.

42. On the historical prevalence of lawyers as policymakers, see generally J. Willard Hurst, *The Growth of American Law: The Lawmakers* (Boston, 1950); Mark C. Miller, *The High Priests of American Politics: The Role of Lawyers in American Political Institutions* (Knoxville, 1995).

43. Livingston, *supra* note 5, at 368.